

AMENDED IN ASSEMBLY MAY 3, 2011

AMENDED IN SENATE APRIL 6, 2011

SENATE BILL

No. 646

Introduced by Senator Pavley

February 18, 2011

An act to amend ~~Section~~ *Sections 25214.1 and 25214.3* of the Health and Safety Code, relating to toxics.

LEGISLATIVE COUNSEL'S DIGEST

SB 646, as amended, Pavley. Toxics: enforcement: lead jewelry.

Existing law prohibits, ~~on and after March 1, 2008~~, the manufacturing, shipping, selling, or offering for sale of jewelry, as defined, for retail sale in the state, unless the jewelry is made entirely from specified materials. Existing law also prohibits any person, ~~on or after September 1, 2007~~, from taking those actions with regard to children's jewelry, as defined, unless the children's jewelry is made entirely of specified materials. *Existing law, for purposes of those provisions, defines among other terms, "amended consent judgment."*

Existing law excludes a person who violates those prohibitions from the criminal penalties otherwise imposed pursuant to the hazardous waste control laws and instead provides that a person who violates those prohibitions is liable for a civil penalty not to exceed \$2,500 per day for each violation. Existing law specifies that a party that is a signatory to an amended consent judgment, or a party to a consent judgment entered in a specified consolidation action that contains certain terms is deemed to be in compliance with those provisions. Existing law requires these collected civil penalties to be deposited in the Hazardous Waste Control Account, for expenditure by the Department of Toxic

Substances Control, upon appropriation by the Legislature, to implement and enforce those prohibitions.

This bill would delete those provisions *defining the term “amended consent judgment,” and those provisions* specifying that a party that is a signatory to the above-described amended consent judgment; or consent judgment enacted in a specified consolidation action is deemed to be in compliance with those provisions.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 25214.1 of the Health and Safety Code
2 is amended to read:

3 25214.1. For purposes of this article, the following definitions
4 shall apply:

5 ~~(a) “Amended consent judgment” means the amended consent~~
6 ~~judgment in the consolidated action entitled People vs. Burlington~~
7 ~~Coat Factory Warehouse Corporation, et al. (Alameda Superior~~
8 ~~Court Lead Case No. RG 04-162075) that was entered by the court~~
9 ~~on June 15, 2006.~~

10 ~~(b)~~

11 (a) “Body piercing jewelry” means any part of jewelry that is
12 manufactured or sold for placement in a new piercing or a mucous
13 membrane, but does not include any part of that jewelry that is not
14 placed within a new piercing or a mucous membrane.

15 ~~(c)~~

16 (b) “Children” means children aged six and younger.

17 ~~(d)~~

18 (c) “Children’s jewelry” means jewelry that is made for,
19 marketed for use by, or marketed to, children. For purposes of this
20 article, children’s jewelry includes, but is not limited to, jewelry
21 that meets any of the following conditions:

22 (1) Represented in its packaging, display, or advertising, as
23 appropriate for use by children.

24 (2) Sold in conjunction with, attached to, or packaged together
25 with other products that are packaged, displayed, or advertised as
26 appropriate for use by children.

27 (3) Sized for children and not intended for use by adults.

28 (4) Sold in any of the following:

1 (A) A vending machine.

2 (B) Retail store, catalogue, or online Web site, in which a person
3 exclusively offers for sale products that are packaged, displayed,
4 or advertised as appropriate for use by children.

5 (C) A discrete portion of a retail store, catalogue, or online
6 Internet Web site, in which a person offers for sale products that
7 are packaged, displayed, or advertised as appropriate for use by
8 children.

9 (e)

10 (d) (1) “Class 1 material” means any of the following materials:

11 (A) Stainless or surgical steel.

12 (B) Karat gold.

13 (C) Sterling silver.

14 (D) Platinum, palladium, iridium, ruthenium, rhodium, or
15 osmium.

16 (E) Natural or cultured pearls.

17 (F) Glass, ceramic, or crystal decorative components, including
18 cat’s eye, cubic zirconia, including cubic zirconium or CZ,
19 rhinestones, and cloisonne.

20 (G) A gemstone that is cut and polished for ornamental purposes,
21 except as provided in paragraph (2).

22 (H) Elastic, fabric, ribbon, rope, or string, unless it contains
23 intentionally added lead and is listed as a class 2 material.

24 (I) All natural decorative material, including amber, bone, coral,
25 feathers, fur, horn, leather, shell, wood, that is in its natural state
26 and is not treated in a way that adds lead.

27 (J) Adhesive.

28 (2) The following gemstones are not class 1 materials: aragonite,
29 bayldonite, boleite, cerussite, crocoite, ekanite, linarite, mimetite,
30 phosgenite, samarskite, vanadinite, and wulfenite.

31 (f)

32 (e) “Class 2 material” means any of the following materials:

33 (1) Electroplated metal that meets the following standards:

34 (A) On and before August 30, 2009, a metal alloy with less than
35 10 percent lead by weight that is electroplated with suitable under
36 and finish coats.

37 (B) On and after August 31, 2009, a metal alloy with less than
38 6 percent lead by weight that is electroplated with suitable under
39 and finish coats.

- 1 (2) Unplated metal with less than 1.5 percent lead that is not
2 otherwise listed as a class 1 material.
- 3 (3) Plastic or rubber, including acrylic, polystyrene, plastic
4 beads and stones, and polyvinyl chloride (PVC) that meets the
5 following standards:
- 6 (A) On and before August 30, 2009, less than 0.06 percent (600
7 parts per million) lead by weight.
- 8 (B) On and after August 31, 2009, less than 0.02 percent (200
9 parts per million) lead by weight.
- 10 (4) A dye or surface coating containing less than 0.06 percent
11 (600 parts per million) lead by weight.
- 12 ~~(g)~~
- 13 (f) “Class 3 material” means any portion of jewelry that meets
14 both of the following criteria:
- 15 (1) Is not a class 1 or class 2 material.
- 16 (2) Contains less than 0.06 percent (600 parts per million) lead
17 by weight.
- 18 ~~(h)~~
- 19 (g) “Component” means any part of jewelry.
- 20 ~~(i)~~
- 21 (h) “Jewelry” means any of the following:
- 22 (1) Any of the following ornaments worn by a person:
- 23 (A) An anklet.
- 24 (B) Arm cuff.
- 25 (C) Bracelet.
- 26 (D) Brooch.
- 27 (E) Chain.
- 28 (F) Crown.
- 29 (G) Cuff link.
- 30 (H) Hair accessory.
- 31 (I) Earring.
- 32 (J) Necklace.
- 33 (K) Pin.
- 34 (L) Ring.
- 35 (M) Body piercing jewelry.
- 36 (N) Jewelry placed in the mouth for display or ornament.
- 37 (2) Any bead, chain, link, pendant, or other component of an
38 ornament specified in paragraph (1).

1 (3) A charm, bead, chain, link, pendant, or other attachment to
2 shoes or clothing that can be removed and may be used as a
3 component of an ornament specified in paragraph (1).

4 (4) A watch in which a timepiece is a component of an ornament
5 specified in paragraph (1), excluding the timepiece itself if the
6 timepiece can be removed from the ornament.

7 (j)

8 (i) (1) “Surface coating” means a fluid, semifluid, or other
9 material, with or without a suspension of finely divided coloring
10 matter, that changes to a solid film when a thin layer is applied to
11 a metal, wood, stone, paper, leather, cloth, plastic, or other surface.

12 (2) “Surface coating” does not include a printing ink or a
13 material that actually becomes a part of the substrate, including,
14 but not limited to, pigment in a plastic article, or a material that is
15 actually bonded to the substrate, such as by electroplating or
16 ceramic glazing.

17 **SECTION 1.**

18 *SEC. 2.* Section 25214.3 of the Health and Safety Code is
19 amended to read:

20 25214.3. (a) Except as provided in Sections 25214.3.3 and
21 25214.3.4, a person who violates this article shall not be subject
22 to criminal penalties imposed pursuant to this chapter and shall
23 only be subject to the administrative or civil penalty specified in
24 subdivision (b).

25 (b) (1) A person who violates this article shall be liable for an
26 administrative or a civil penalty not to exceed two thousand five
27 hundred dollars (\$2,500) per day for each violation. That
28 administrative or civil penalty may be assessed and recovered in
29 an administrative action filed with the Office of Administrative
30 Hearings or in a civil action brought in any court of competent
31 jurisdiction.

32 (2) In assessing the amount of an administrative or a civil
33 penalty for a violation of this article, the presiding officer or the
34 court, as applicable, shall consider all of the following:

35 (A) The nature and extent of the violation.

36 (B) The number of, and severity of, the violations.

37 (C) The economic effect of the penalty on the violator.

38 (D) Whether the violator took good faith measures to comply
39 with this article and the time these measures were taken.

40 (E) The willfulness of the violator’s misconduct.

1 (F) The deterrent effect that the imposition of the penalty would
2 have on both the violator and the regulated community as a whole.

3 (G) Any other factor that justice may require.

4 (c) Administrative and civil penalties collected pursuant to this
5 article shall be deposited in the Toxic Substances Control Account,
6 for expenditure by the department, upon appropriation by the
7 Legislature, to implement and enforce this article, except as
8 provided in Section 25192.

9 (d) (1) For the purpose of administering and enforcing this
10 article, an authorized representative of the department, upon
11 obtaining consent or after obtaining an inspection warrant pursuant
12 to Title 13 (commencing with Section 1822.50) of Part 3 of the
13 Code of Civil Procedure, may, upon presenting appropriate
14 credentials and at a reasonable time, do any of the following:

15 (A) Enter a factory, warehouse, or establishment where jewelry
16 is manufactured, packed, held, or sold; enter a vehicle that is being
17 used to transport, hold, or sell jewelry; or enter a place where
18 jewelry is being held or sold.

19 (B) Inspect a factory, warehouse, establishment, vehicle, or
20 place described in subparagraph (A), and all pertinent equipment,
21 raw material, finished and unfinished materials, containers, and
22 labeling in the factory, warehouse, establishment, vehicle, or place.
23 In the case of a factory, warehouse, or establishment where jewelry
24 is manufactured, packed, held, or sold, this inspection shall include
25 any record, file, paper, process, control, and facility that has a
26 bearing on whether the jewelry is being manufactured, packed,
27 held, transported, sold, or offered for sale or for promotional
28 purposes in violation of this article.

29 (2) (A) An authorized representative of the department may
30 secure a sample of jewelry when taking an action authorized
31 pursuant to this subdivision. If the representative obtains a sample
32 prior to leaving the premises, he or she shall leave a receipt
33 describing the sample obtained.

34 (B) The department shall return, upon request, a sample that is
35 not destroyed during testing when the department no longer has
36 any purpose for retaining the sample.

37 (C) A sample that is secured in compliance with this section
38 and found to be in compliance with this article that is destroyed
39 during testing shall be subject to a claim for reimbursement.

1 (3) An authorized representative of the department shall have
2 access to all records of a carrier in commerce relating to the
3 movement in commerce of jewelry, or the holding of that jewelry
4 during or after the movement, and the quantity, shipper, and
5 consignee of the jewelry. A carrier shall not be subject to the other
6 provisions of this article by reason of its receipt, carriage, holding,
7 or delivery of jewelry in the usual course of business as a carrier.

8 (4) An authorized representative of the department shall be
9 deemed to have received implied consent to enter a retail
10 establishment, for purposes of this section, if the authorized
11 representative enters the location of that retail establishment where
12 the public is generally granted access.